

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:	)	Docket SRPD 98/99 SNS-4012
	)	
	)	
Mlodzik Corporation,	)	
dba Monitor Plating & Anodizing)		CONSENT ORDER
a California Corporation	)	
800 East Orangefair Lane	)	
Anaheim, California 92801	)	Health and Safety Code
EPA ID Number CAD041325143	)	Sections 25187
	)	
Respondent.	)	
_____	)	

**INTRODUCTION**

The State Department of Toxic Substances Control (Department) and Mlodzik Corporation, dba Monitor Plating & Anodizing, a California Corporation (Respondent) enter into this Consent Order (Order) and agree as follows:

1.1. Respondent is the owner and operator of a hazardous waste facility located at 800 East Orangefair Lane, Anaheim, California 92801 (Facility). Respondent was purchased by Mr. Brett L. Pio on or about May 28, 1998. Prior to May 28, 1998, Respondent was owned and operated by Mr. Don Mlodzik.

1.2. Section 25187 of the Health and Safety Code (HSC) authorizes the Department to issue an enforcement order when the Department determines that there may be a violation or threatened violation of the HSC or any regulation adopted

pursuant thereto. Onsite treatment of cyanide wastes without a permit, consent order, or other grant of authorization from the Department is a violation of HSC section 25201. The Department is the state agency authorized by U.S. EPA to implement the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. section 6901 et seq. in California. The Department implements and enforces the Hazardous Waste Control Law, HSC section 25100 et seq., and the implementing regulations, Title 22, California Code of Regulations, (22 Cal. Code Regs.) Division 4.5, in lieu of RCRA in California.

1.3. The Department intends to establish appropriate grants of authorization for treatment of cyanide wastes as part of its rulemaking process.

1.4. On August 25, 1993, Respondent was authorized by the Department to manage specified hazardous waste pursuant to Permit by Rule (PBR) provisions in the HSC and applicable regulations.

1.5. A dispute exists regarding the unauthorized treatment of cyanide waste, and the failure to submit required documents to the Department by January 1, 1997 pursuant to Health and Safety Code (HSC) section 25200.14.

2. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

3. Jurisdiction exists pursuant to HSC section 25187.

4. Respondent waives any right to a hearing in this matter.

5. This Order shall constitute full settlement of the violations alleged in paragraph 7., but does not limit the Department from taking appropriate enforcement action concerning other violations. In addition, this Order will authorize the on-site treatment of hazardous wastewater currently stored onsite generated during the fire fighting activities on March 14, 1999, as well as authorize on-site treatment of cyanide wastewater as set forth herein.

#### **FINDINGS OF FACT**

6. On or about May 17, 1999, the Orange County Health Care Agency Certified Unified Program Agency (CUPA) informed the Department that a fire occurred at the Facility on March 14, 1999, and as a result of the fire suppression activity hazardous wastewater in the amount of about 140,000 gallons was generated and is now stored at the Facility. The CUPA also informed the Department that this Facility may need corrective action for which the CUPA is not authorized to oversee as specified in HSC section 25404.1 et.seq.

6.1. Respondent violated 22 Cal. Code Regs., sections 67450.3(c)(1) and 67450.3(c)(2) when it failed to submit the annual, and amended Onsite Hazardous Waste Treatment

Notification form to the Department and CUPA as required since May 28, 1998.

6.2. Respondent engaged in the treatment of cyanide waste onsite without a permit, consent order, or other types of authorization from the Department.

6.3. On March 14, 1999, a fire occurred at the Facility which destroyed the manufacturing/plating process area.

6.4. On June 1, 1999, Respondent submitted to the Department a copy of the Facility Information Form, Onsite Treatment of Cyanide Wastes, and a copy of the Phase I Environmental Assessment Checklist (Phase I) claiming further investigation is required pursuant to HSC section 25200.14.

6.5. On June 2, 1999, Respondent submitted to the Department a copy of the Certification for Financial Assurance for Closure pursuant to 22 Cal. Code Regs. section 67450.13.

6.6. On June 9, 1999, the Department's representative conducted a Facility visit at the Facility to gather information concerning the storage of the hazardous wastewater accumulated from the fire incident, and to verify information contained in the Phase I Checklist, and Facility Information Form. About 140,000 gallons of hazardous wastewater contaminated with metals and cyanide was stored in a total of 26 Baker tanks. The Baker tanks were located on the east side, and on the southwest side yard of the Facility.

6.7. On June 15, 1999, Respondent together with the Orange County Sanitation District and CUPA representatives met with the Department. Respondent indicated its intention to perform onsite treatment of the hazardous wastewater currently stored in Baker tanks.

#### **DETERMINATION OF VIOLATIONS**

7. The Department alleges the following violations:

7.1. Respondent violated HSC, section 25200.14(b)(1) by failing to complete and submit a Phase I Environmental Assessment Checklist with the Department by January 1, 1997.

7.2. Respondent violated HSC 25201(a) by treating cyanide wastes onsite without a permit, consent order, or other grant of authorization from the Department.

7.3. Respondent violated 22 Cal. Code Regs., sections 67450.3(c)(1) and 67450.3(c)(2) by failing to submit to the Department and CUPA the annual, and amended Onsite Hazardous Waste Treatment Notification Form, respectively.

#### **SCHEDULE FOR COMPLIANCE**

8. Respondent shall submit the amended Onsite Hazardous Waste Treatment Notification page, Business Activities page, and the Business Owner/Operator page of the Unified Program

Consolidated Form to the CUPA and to the Department within 15 days of the effective day of this Order.

8.1. Respondent shall submit to the Department a schedule for further investigation pursuant to HSC section 25200.14(e)(1) by August 31, 1999. This Order shall not prevent the California Regional Water Quality Control Board from issuing an order as authorized by HSC section 25200.14(e)(3).

8.2. Respondent shall comply with the following for the management of the hazardous wastes currently stored onsite:

8.2.1 Respondent shall prepare and submit for approval to the CUPA and to the Orange County Sanitation District a Plan for the treatment and disposal of the hazardous wastewater currently stored onsite within 15 days of the effective date of this Order.

8.2.2. Respondent shall treat or dispose of the hazardous wastewater currently stored onsite within 90 days of the effective date of this Order.

8.2.3. Respondent shall place all tanks inside a bermed area.

8.2.4. Respondent shall provide 24-hour security at the Facility.

8.2.5. Respondent shall conduct daily inspections of all tanks holding hazardous wastewater currently stored onsite.

8.2.6. Respondent shall have an inventory of all hazardous chemicals and wastes at the Facility.

8.3. Respondent is authorized to treat hazardous wastewater containing cyanide as provided hereinafter and on conditions that it complies with the following provisions.

8.3.1. Respondent shall comply with the following to the satisfaction of the CUPA before engaging in the treatment of hazardous wastewater containing cyanide.

8.3.2. When PBR regulations or other forms of authorization are approved for cyanide treatment authorized pursuant to Paragraph 8.3. covered by this Order, Respondent will comply with all requirements for operation under those provisions and this section of the Order will no longer apply to that activity.

8.3.3. If the Department later notifies Respondent that Respondent's activity authorized pursuant to Paragraph 8.3. will not be addressed under PBR or other forms of authorization, the Respondent shall cease treatment of wastes containing cyanide and complete closure of the unit(s), or within 60 days of such notification apply for a full permit following the requirements of 22 Cal. Code Regs., Division 4.5, Chapter 20. Closure shall be conducted in accordance with interim status facility closure requirements specified in 22 Cal. Code Regs., Division 4.5, Chapter 15, Article 7. If

Respondent chooses to apply for a permit, Respondent shall comply with the conditions of this Consent Order until a permit decision is made.

8.3.4. Respondent shall immediately begin work to achieve compliance with requirements applicable to a PBR facility, as detailed in 22 Cal. Code Regs., Division 4.5, Chapter 45.

8.3.5. **Identification Number.** If Respondent does not have an Identification Number as required by 22 Cal. Code Regs., section 66265.11, Respondent shall apply for an Identification Number.

8.3.6. **Required Notices.** Respondent shall comply with all requirements of 22 Cal. Code Regs., section 66265.12.

8.3.7. **Waste Analysis.** Respondent shall develop and implement a written waste analysis plan meeting the requirements of 22 Cal. Code Regs., section 66265.13. (b) Respondent shall comply with 22 Cal. Code Regs., section 66265.13 once a waste analysis plan is developed.

8.3.8. **Security.** Respondent shall comply with 22 Cal. Code Regs., section 66265.14.

8.3.9. **Inspections.** Respondent shall develop and implement a written inspection schedule meeting the requirements of 22 Cal. Code Regs., section 66265.15. (b) Respondent shall comply with 22 Cal. Code Regs., section

66265.15 once an inspection schedule is developed.

8.3.10. **Personnel Training.** Respondent shall implement a training program meeting the requirements of 22 Cal. Code Regs., section 66265.16 for Facility personnel. All personnel shall complete the required training.

8.3.11. **Ignitable, Reactive or Incompatible Wastes.** Respondent shall comply with 22 Cal. Code Regs., sections 66265.17, 66265.176 - 66265.177, and 66265.198 - 66265.199.

8.3.12. **Operating Record.** Respondent shall comply with the requirements of 22 Cal. Code Regs., section 67450.3(c)(9)(D). Respondent shall compile all existing records of previous activities which would have been required to be kept under this section, and incorporate those records into the current operating record, to the extent possible.

8.3.13. **Closure.** Respondent shall comply with all closure requirements as outlined in 22 Cal. Code Regs., sections 67450.3(c)(8)(G) and (c)(11)(B).

8.3.14. **Closure Cost Estimate.** Respondent shall prepare and maintain a written closure cost estimate for the Facility meeting the requirements of 22 Cal. Code Regs., section 67450.13(a)(1) - (3).

8.3.15. **Closure Cost Assurances.** Respondent shall establish and demonstrate to the Department financial assurance for closure in the amount of the closure cost

estimate developed pursuant to Paragraph 8.3.14., as required under 22 Cal. Code Regs., section 67450.13(a)(5).

8.3.16. **Management of Wastes in Tank Systems.** Respondent shall comply with the following requirements regarding hazardous waste tanks that fail to meet the requirements of 22 Cal. Code Regs., section 66265.193:

8.3.16.1. Respondent shall conduct an integrity assessment that meets the requirements of 22 Cal. Code Regs., section 66265.191 for the tank system lacking full secondary containment.

8.3.16.2. If the integrity assessment conducted pursuant to Paragraph 8.3.16.1. shows that the tank system is leaking or unfit for use, Respondent shall comply with the requirements of 22 Cal. Code Regs., section 66265.196.

8.3.16.3. Respondent shall provide secondary containment meeting the requirements of 22 Cal. Code Regs., subsections 66265.193(c), (d)(1 - 3) and (e) for the entire tank system.

8.3.16.4. Respondent shall conduct an integrity assessment of those portions of the tank system not meeting the secondary containment requirements of 22 Cal. Code Regs., section 66265.191 annually from the date of the integrity assessment conducted pursuant to Paragraph 8.3.16.1. until the entire tank system meets applicable regulatory requirements.

8.3.16.5. Notwithstanding the above, Respondent agrees to

comply with applicable regulations specifying alternatives to the secondary containment requirements currently in 22 Cal. Code Regs., section 66265.193.

8.3.17. **Facility Modifications.** All facility modifications for activities authorized under Paragraph 8.3. must be approved by the Department prior to any such changes.

8.3.18. **Submittals.** All submittals from Respondent pursuant to this Order shall be sent simultaneously to:

Mr. Stephen W. Lavinger, Chief  
Southern California Branch  
State Regulatory Programs Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

Mr. Jack L. Miller, Director  
Environmental Health Division  
Orange County Health Care Agency  
2009 East Edinger Avenue  
Santa Ana, California 92705-4720

In addition, all submittals required by this Order may be submitted by facsimile followed by a written hard copy.

8.3.19. **Communications.** All approvals and decisions of the Department made regarding such submittals and notifications will be communicated to Respondent in writing by the Regional State Regulatory Programs Division Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications,

schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

8.3.20. **Department Review and Approval.** If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may: (a) modify the document as deemed necessary and approve the document as modified; (b) return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

8.3.21. **Compliance with Applicable Laws.** Respondent shall carry out this Order in compliance with all local, State, and Federal requirements, including, but not limited to, requirements to obtain permits and to assure worker safety, except as specifically provided in this Order.

8.3.22. **Endangerment During Implementation.** In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the

surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this paragraph shall be extended for the term of such Stop Work Order.

8.3.23. **Liability.** Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment. By agreeing to this Order, the Department does not waive the right to take further enforcement actions.

8.3.24. **Facility Access.** Access to the Facility shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Facility at all reasonable times for purposes including but not limited to: inspecting records,

operating logs, and contracts relating to the Facility;  
reviewing the progress of Respondent in carrying out the terms  
of this Order; and conducting such tests as the Department may  
deem necessary. Respondent shall permit such persons to  
inspect and copy all records, documents, and other writings,  
including all sampling and monitoring data, in any way  
pertaining to work undertaken pursuant to this Order.

**8.3.25. Sampling, Data, and Document Availability.**

Respondent shall permit the Department and its authorized  
representatives to inspect and copy all sampling, testing,  
monitoring, and other data generated by Respondent or on  
Respondent's behalf ~~in any way~~ pertaining to work undertaken  
pursuant to this Order. Respondent shall allow the Department  
and its authorized representatives to take duplicates of any  
samples collected by Respondent pursuant to this Order.  
Respondent shall maintain a central depository of the data,  
reports, and other documents prepared pursuant to this Order.  
All such data, reports, and other documents shall be preserved  
by Respondent for a minimum of six years after the conclusion  
of all activities under this Order. If the Department  
requests that some or all of these documents be preserved for  
a longer period of time, Respondent shall either comply with  
that request, deliver the documents to the Department, or  
permit the Department to copy the documents prior to

destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

8.3.26. **Government Liabilities.** The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in Paragraph 8.3.31. in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

8.3.27. **Incorporation of Plans and Reports.** All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

8.3.28. **Extension Requests.** If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

8.3.29. **Extension Approvals.** If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance

schedule.

8.3.30. **Penalties for Noncompliance.** Failure to comply with the terms of this Order may subject Respondent to civil penalties and/or punitive damages for costs incurred by the Department or other government agencies as a result of such failure, as provided by HSC, section 25188 and other applicable provisions of law.

8.3.31. **Parties Bound.** This Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department or any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Order.

8.3.32. **Compliance with Waste Discharge Requirements.** Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board, and the Orange County Sanitation District.

8.3.33. **Integration.** This Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order or agreed by the parties.

## **PAYMENTS**

9. Within 30 days of the effective date of this Order, Respondent shall pay the Department a total of \$6,750.00, of which \$3,375.00 is a penalty and \$3,375.00 is administrative costs according to the Payment Voucher shown as Attachment 1.

In addition, Respondent shall reimburse the Department for its ongoing administrative costs per year for as long as Respondent operates treatment of hazardous wastewater containing cyanide, pursuant to this Order. The "administrative costs" is the amount the facility would be paying in fees assessed under PBR. Pursuant to HSC section 25205.14(a), the current PBR fee is \$1001.00. Thereafter, the fee shall be adjusted annually by the board to reflect increases and decreases in the cost of living as measured by the Consumer Price Index issued by the Department of Industrial Relations or a successor agency. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and the Docket Number, as shown in the heading of this case. Within 30 days of the date this Order is fully executed, and within 30 days of each anniversary of the date while Respondent operates pursuant to this Order, Respondent shall deliver the

administrative cost payment together with the attached Payment  
Voucher to:

Department of Toxic Substances Control  
Accounting Office  
400 P Street, 4th Floor  
P. O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mr. Stephen W. Lavinger, Chief  
Southern California Branch  
State Regulatory Programs Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

If Respondent fails to make payment as provided above,  
Respondent agrees to pay interest at the rate established  
pursuant to HSC section 25360.1 and to pay all costs incurred  
by the Department in pursuing collection including attorney's  
fees.

10. **Effective Date.** This Order is effective on the date  
it is signed by the Department.

## SIGNATORIES

11. Each undersigned representative certifies that he or she is fully authorized to enter into this Order.

Dated: Aug. 10, 1999

Signed by Brett L. Pio  
Signature of Respondent's  
Representative

Brett L. Pio, President  
Typed or Printed Name and Title of  
Respondent's Representative

Dated: August 11, 1999

Signed by Stephen W.  
Lavinger  
Stephen W. Lavinger, Chief  
Southern California Branch  
State Regulatory Programs Division  
Department of Toxic Substances  
Control